THE HON'BLE SRI JUSTICE A.GOPAL REDDY

AND

THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

WRIT PETITION No.10061 of 2007

Dated: 11.06.2007

Between:

Smt.Pegadapally Lakshmi

... PETITIONER

AND

1. The Collector and District Magistrate,
   Karimnagar District, Karimnagar and another.

...RESPONDENTS

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

AND

THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

WRIT PETITION No.10061 of 2007

ORDER: (***Per the Hon'ble Sri Justice A.Gopal Reddy***)

By means of filing this writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ of Habeas Corpus for production of her husband viz., Pegadapally Mondaiah, and for releasing him after declaring the detention order, dated 16.04.2007, passed by the first respondent, as illegal and invalid.

The facts that are not in dispute are as under:

By the impugned order, dated 16.04.2007, the first respondent, in exercise of the power under Section 3(2) read with Section 3(1) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as "Act 1 of 1986"), ordered for detention of Pegadapally Mondaiah on the ground that he was found in possession of illicit distilled liquor and that he was involved in seven other criminal cases i.e.,

(i) C.O.R.No.74/2006-07, dated 19.06.2006 (ii) C.O.R.No.113/2006-07, dated 22.07.2006 (iii) C.O.R.No.184/2006-07, dated 31.08.2006

(iv) C.O.R.No.262/2006-07, dated 09.10.2006 (v) C.O.R.No.403/2006-07, dated 06.12.2006 (vi) C.O.R.No.462/2006-07, dated 30.12.2006 and (vii) C.O.R.No.550/2006-07, dated 07.02.2007, under Section 7(A) read with Section 8(e) of A.P. Prohibition & Excise Act 1995 on the file of Prohibition & Excise Station, Godavarikhani – I. In the said cases, the Chemical Examiner gave his report opining that the contraband seized from the detenu was illicit distilled liquor containing sediment,

which is injurious to health and unfit for human consumption.

A counter-affidavit has been filed by the first respondent stating that the activities of the detenu fall within the definition of “Bootlegger” as defined under Section 2(b) of Act 1 of 1986 and therefore the detention order was passed. It is also stated that pursuant to the detention order, the detenu was taken into custody on 17.04.2007 and is detained in Central Prison, Warangal. The detenu was served with the order of detention, the ground of detention and material relied both in English and Telugu and the same was acknowledged by him. Further, the detenu was duly informed that he has a right to make representation to the Detaining Authority, Chief Secretary to Government and Advisory Board. It is further stated that the Government in G.O.Rt.No.2185, General Administration (Law & Order.II) Department, dated 24.04.2007 approved the order of detention. The order of detention passed against the detenu was placed before the Advisory Board in its meeting held on 30.04.2007 and the Advisory Board, after hearing the detenu, rendered its opinion stating that “there is sufficient cause for the detention of the detenu”. On such opinion being rendered by the Advisory Board, the Government in exercise of the powers conferred under sub-Section (1) of Section 12 read with Section 13 of Act 1 of 1986 confirmed the order of detention vide G.O.Rt.No.2381, General Administration (Law & Order.II) Department, dated 03.05.2007 and directed that the detention of the detenu be continued for a period of 12 months from the date of his detention.

Learned counsel for the petitioner, by placing reliance upon the judgment of a Division Bench of this Court in W.P.No.8980 of 2007, dated 16.05.2007, contends that this Court set aside the detention order passed against the detenu therein for similar offences and that since the detenu herein also hails from the same place he is also entitled to similar order.

This Court, in the above said judgment, in the light of the views expressed by the Apex Court in a catena of decisions while dealing with the Detention Legislations in the context of Articles 21 and 22 of the Constitution of India, held that the grounds which had been specified in the detention order were insufficient to sustain the order under the provisions of the Act and that the justification advanced and the close proximity of the offences could not be a ground to sustain the order, and accordingly, quashed the order of detention.

The Supreme Court in ***Collector and District Magistrate, Eluru v. Sangala Kondamma***[1] while disagreeing with the view taken by this Court in setting aside the detention order on identical facts, held that the Court should have considered the proximity of the incidents between themselves which indicates the possibility of the proposed detenu continuing to indulge in the illegal activities which requires his preventive detention. It was further held that the five incidents recorded in the order of detention being proximate enough to each other shows the continuity of the acts of the detenu. In such a fact situation, the High Court erred in coming to the conclusion that two of the five grounds being not proximate to the order of detention and the order of detention was based on stale grounds. The Supreme Court upheld the validity of the order of detention passed by the detaining authority by disagreeing with the finding of the High Court. However, the detenue therein was taken into custody on 15-1-2003 and was released from detention pursuant to the order of the High Court on 28-4-2003 and at this distance of time the detaining authority had no fresh material to show that further detention of the detenu was necessary. Therefore, the Supreme Court held that there was no need to re-arrest the detenu to serve out the balance period of detention, and accordingly set aside the impugned order.

The Supreme Court in ***Commissioner of Police v.***

Smt. C.Anita[2] held that the Court should not substitute its own opinions for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant, and accordingly set aside the impugned judgment.

From the above two judgments of the Supreme Court, it is clear that the detention of a detenu is necessary where his chances of continuing to indulge in the illegal activities are more and which require his preventive detention. In the present case, the detenu is involved in more than seven crimes and in order to see that he shall not repeat to distribute the illicit distilled liquor for human consumption, which is injurious to health, his detention is necessary.

In this view of the matter, we see no merit in the writ petition and the same is accordingly dismissed.

A.GOPAL REDDY, J

P.SWAROOP REDDY, J

Date: 11.06.2007
va

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[1] AIR 2005 SUPREME COURT 1165
[2] (2004) 7 Supreme Court Cases 467